

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

AZIZ RAHIM BOOKER,

Plaintiff,

v.

Case No. 22-CV-1567

CHELSEA FOX GOTZ, *et al.*,

Defendant.

ORDER

Plaintiff Aziz Rahim Booker, who is confined at Oshkosh Correctional Institution and representing himself, filed a lawsuit pursuant to 42 U.S.C. § 1983 claiming the defendant violated his constitutional rights. (ECF No. 1.) On December 30, 2022, he filed a motion for leave to proceed without prepayment of the filing fee and a certified copy of his trust account statement for the six months prior to his lawsuit. (ECF Nos. 2, 3.)

Under the PLRA, the court must assess an initial partial filing fee of twenty percent of the average monthly deposits to Booker's account or average monthly balance in Booker's prison account for the six-month period immediately preceding the filing of the complaint, whichever is greater. *Id.* After the initial partial filing fee is paid, Booker must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. ' 1915(b)(2). The agency

having custody of the prisoner shall forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid. *Id.* The amount of the filing fee can be recovered as part of the costs of the action in the event Booker ultimately prevails.

Booker filed a certified copy of his prisoner trust account statement for the six-month period immediately preceding the filing of the complaint. A review of this information reveals that, during this period, the average monthly deposit in Booker's prison account was \$797.45 and the average monthly balance to the account was \$2,321.24. Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1), Booker would be required to pay an initial partial filing fee of \$446.25. This amount exceeds the \$350.00 statutory filing fee. Because the statutory formula (§ 1915(b)(2)) requires that Booker pay an initial partial filing fee that exceeds the \$350.00 statutory filing fee, the court will deny Booker's motion for leave to proceed without prepaying the filing fee. As explained below, the court will order Booker to pay the \$402.00 filing fee, or explain why he cannot do so, within twenty-one days of the date of this order.

The PLRA also provides that, if a prisoner files three or more actions or appeals which are dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted, Booker will be prohibited from bringing any other actions *in forma pauperis* unless Booker is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event this action is later dismissed for any of the above

reasons, it may have an impact on Booker's ability to bring other actions *in forma pauperis*. The court will not screen the complaint until Booker pays the initial partial filing fee. Accordingly, Booker will be afforded an opportunity to voluntarily dismiss this action to avoid incurring a "strike" under § 1915(g).

Notice to Plaintiff. If you do not wish to proceed with this action to avoid incurring a "strike" under § 1915(g) or do not wish to pay the filing fee as set forth in this Order, you must notify the court by filing a letter with the Clerk of Court **on or before January 31, 2023**. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under § 1915(g).

If Booker proceeds, Booker is advised that the complaint will be screened, and even if it is immediately dismissed because it fails to state a claim upon which relief can be granted or for any other reason, the court will not refund Booker's initial partial filing fee.

IT IS THEREFORE ORDERED that Booker's motion for leave to proceed without prepayment of the filing fee (ECF No. 2) is **DENIED**.

IT IS FURTHER ORDERED that Booker must pay the \$402.00 filing fee **on or before January 31, 2023**, by submitting a check or money order made payable to the Clerk of Court. If Booker is not able to pay the \$402.00 filing fee from his regular trust account this date, he must advise the court in writing why he is not able

to do so and if he thinks there is good cause to for the court to order payment of the \$402.00 filing fee from his release account.

IT IS FURTHER ORDERED that, if by **January 31, 2023**, Booker fails to pay the \$402.00 filing fee or show cause for failure to do so, this case may be dismissed without prejudice for failure to prosecute.

IT IS FURTHER ORDERED that a copy of this order be sent to the officer in charge of the agency where the inmate is confined.

IT IS FURTHER ORDERED that no further action will be taken in this case until the clerk's office receives Booker's payment of the full \$402.00 filing fee as directed above and the court has screened the complaint as required by the PLRA, 28 U.S.C. ' 1915A. Once the screening process is complete, a separate order will issue.

Dated at Milwaukee, Wisconsin this 10th day of January, 2023.

BY THE COURT:

NANCY JOSEPH
United States Magistrate Judge